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1938

**RULES**  
of the  
**DISTRICT**  
**COURT**

of the  
**Fifth Judicial District**  
of the  
**State of Montana**

Comprising the Counties of  
**Beaverhead, Jefferson**  
**and Madison**

**1938**

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**and Madison**

**1938**



**JUDGES OF THE DISTRICT COURT**  
**of the Fifth Judicial District of the State of Montana,**  
**In and For the Counties of Beaverhead,**  
**Jefferson and Madison**

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THOMAS J. GALBRAITH, Republican, Beaverhead County, elected October 1, 1889, for a three-year term; term expired first Monday in January, 1893.

FRANK SHOWERS, Republican, Jefferson County, elected November, 1892; served from first Monday in January, 1893, to first Monday in January, 1897.

MONTGOMERY H. PARKER, Democrat, Jefferson County, elected November 1896, and re-elected November, 1900; served from first Monday in January, 1897, to first Monday in January, 1905.

LLEWELLYN L. CALLAWAY, Republican, Madison County, elected November, 1904; re-elected without opposition November, 1908; served from first Monday in January, 1905, to first Monday in January, 1913.

JOSEPH B. POINDEXTER, Democrat, Beaverhead County, appointed by Gov. Norris, March, 1909, on creation of Second Judgeship in District, and took office on April 1, 1909, and was elected November, 1910, and re-elected November, 1912; served from April 1, 1909, to June 1, 1915, when he resigned to accept appointment as Attorney General of the State of Montana.

WILLIAM A. CLARK, Democrat, Madison County, elected November, 1912; re-elected November, 1916, re-elected November, 1920; served from first Monday in January, 1913 to January 12, 1921, on which date he died at Red Lodge, Montana.

JOSEPH C. SMITH, Democrat, Beaverhead County, appointed by Governor Stewart to succeed Judge Poindexter October 11, 1915, took office November 15, 1915, elected November, 1916, and re-elected November, 1920, and served to first Monday in January, 1925.

LYMAN H. BENNETT, Republican, Madison County, appointed by Gov. Joseph M. Dixon, July 22, 1921 to fill vacancy caused by death of Hon. William A. Clarke; elected November, 1922, to fill unexpired term; re-elected November, 1924; re-elected November, 1928; re-elected November, 1932 and served to first Monday in January, 1937.

HENRY G. RODGERS, Republican, Beaverhead County, elected November, 1924; re-elected November, 1928 and served to October 1, 1931 on which date he resigned to enter private practice.

HENRY G. RODGERS, Non-Partisan, Beaverhead County, elected November, 1936; present incumbent.



# COURT RULES

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## STIPULATIONS

I. No agreement between parties or their attorneys touching any business pending in court will be regarded by the court, unless the same shall have been made in open court and at the time entered in the minutes, or unless the same shall be in writing, subscribed by the party against whom the same may be alleged, or by his attorney. And it shall be the duty of the party relying upon any minute entry to see that the same is duly entered.

## INTERLINEATIONS

II. No pleading or other writing on file in this court shall be amended by interlineation, or erasure or any part thereof, except upon permission of the court first had, and then only by the clerk in the presence of the court and the attorneys representing the parties interested.

## FILES AND RECORDS OF COURT

III. No paper or record belonging to the files of the court shall be taken from the custody of the clerk except upon his permission and except upon giving a receipt to him specifying the paper taken; but a will, bond, or undertaking shall not be taken from the custody of the clerk at any time. All papers received from the clerk shall be returned to him within three days thereafter. Provided, however, the foregoing shall in no way abridge the right of the court or clerk at any time to demand and secure an immediate return of any such papers when desired.

## PLEADINGS

IV. All pleadings, and papers in the nature of pleadings, statements on motion for a new trial, and bills of exceptions, before being served or filed, shall be pagged and the lines numbered.

In all cases of more than one distinct cause of action defense, or counter claim, the same shall be separately stated and plainly numbered. All bills of exceptions and

statements shall be typewritten upon good quality linen paper, with margin on top, bottom and left-hand side, and all pleadings for filing in the office of the Clerk of the Court shall be so prepared that they may be filed flat and shall not be folded or creased.

### MOTIONS TO STRIKE OUT

V. The party moving to strike out any part or portion of a pleading or kindred paper shall, in the notice of motion and motion, distinctly specify the page and lines, or parts of lines, asked to be stricken out.

### MOTIONS IN GENERAL

VI. All motions except those formal ones made during the progress of the trial shall be made in writing and filed with the clerk. Copies thereof shall be served upon the adverse party contemporaneously with the filing of the original.

A motion and a demurrer shall not be interposed at the same time directed against the same pleading. All motions must be disposed of before other pleadings can be filed. Successive motions or successive demurrers must not be interposed to the same pleading.

When a motion or a demurrer is filed that goes to a part of the pleading only, there shall be no default taken as to the residue thereof, but the same shall stand until the motion or demurrer filed shall have been disposed of with due diligence, the answer or reply to the whole pleading shall be filed at the same time.

### TIME TO AMEND

VII. When a demurrer or motion to any pleading is sustained or overruled the losing party shall have ten days after notice of the decision or order of the court within which to amend, answer, reply, or plead, unless a different time shall be prescribed in the statute or in the order sustaining or overruling the demurrer or motion.

If the attorney for the losing party is in court when the decision is made the time runs from the making of the decision or order.



When it is necessary that notice of the decision or order be given, it shall be given forthwith by the clerk personally, by writing, or by telegraph; and the clerk shall keep a record of such notices, and of the manner in which given by him, in the minutes of the court.

## DISPOSITIONS OF MOTIONS AND DEMURRERS FOR FAILURE TO ARGUE

VIII. If a motion be not made or a demurrer be not called up on the day for which it has been noticed, unless good cause appear for failure to make the same, upon motion of the opposite party, the court may, in its discretion, at the close of the business for that day, deny the motion. Upon the calling of the calendar, if no counsel appears to support a demurrer, and the opposing party be present, ready to submit the same, the court may in like manner, in its discretion, overrule the same upon the ground of such non-appearance.

A motion for a new trial, under like circumstances, will in like manner be deemed abandoned and on that ground denied.

## CALLING CALENDAR

IX. The docket will be called on the first day of each term, when causes at issue will be assigned for trial, unless the cause be continued for the term by agreement, or both plaintiff and defendant request that it be not assigned for trial at that time. When attorneys cannot agree as to the time for setting causes, and either party desires a trial, the causes will be set by the court and any person desiring a continuance must apply to the court for the same in the manner provided by law.

## NOTICE OF TRIAL

X. When the calendar is called and causes are set for trial the clerk shall immediately thereafter notify the attorneys interested therein, unless they are present at the time of the call, of the setting of such causes for trial. Such notice may be given by postal card mailed to such attorneys at their usual addresses.

## FAILURE TO APPEAR FOR TRIAL

XI. When any cause shall be regularly called for trial and counsel shall answer for neither party, the cause shall be deemed continued, to be reset on the next general calendar, or it may be stricken from the calendar, or dismissed for want of prosecution, in the discretion of the court.

## CONTINUANCE

XII. Application for continuance of causes must be made at or before the calling of the calendar for the setting of causes for trial. No such application will be heard thereafter, unless it be made to appear that the ground upon which it is based was not known to exist at the time the calendar was called. After a cause has been set for trial and it is necessary to have it continued, the party desiring a continuance shall give the opposite party one day's notice that an application for that purpose will be made. A hearing will be had at the expiration of the one day's notice. The affidavit in support of the application, besides showing a good ground for a continuance, must also state the time at which the applicant was first informed of the fact making such continuance necessary. A continuance of a cause will not be granted after it has been set for trial, except upon payment of the costs of the term. When a cause has been continued upon such application, the party upon whose motion the continuance is had will not be heard therein again until such costs are paid. If there is not time sufficient after the discovery of the fact rendering a continuance necessary, and before the day of trial, to give the notice provided for herein, the motion for continuance may be heard when the cause is called for trial.

## JUDGMENT ON THE PLEADINGS

XIII. A motion for judgment on the pleadings must be made before the cause has been set for trial. If made thereafter, it will not be entertained except upon payment by the party making the motion of all costs accruing after the setting of the cause.

## CONDUCT OF TRIAL

XIV. No argument, motion, nor suggestion to the court, other than a formal objection, or exception, will be entertained, unless the attorney making the same first rise in his place and address the court. In the examination of witnesses but one attorney upon each side will be permitted to examine or cross-examine the same witness except by permission of the court.

## OBJECTIONS UPON TRIAL

XV. Objections to the admissibility of testimony will be decided without argument, upon a statement of the grounds of objection, unless an argument is desired by the court.

## WITNESSES

XVI. A party having a witness in attendance may discharge him at pleasure after giving notice to the attorney of the opposite party of his intention so to do. If the opposite party desires to use such witness, he must then procure his attendance by subpoena, and he shall be responsible to the witness for his fees from that time.

## WITNESSES IN CRIMINAL CASES

XVII. The clerk shall not issue subpoenas in any criminal cause for more than six witnesses for either the state or the defendant, except upon order of court made upon good cause shown by affidavit. In case it shall be necessary for either party to have more than six witnesses in any cause the party desiring them shall make affidavit setting forth the materiality of the evidence of such witness and also the fact that the evidence of the six witnesses allowed without order of court is material. Thereupon an order of court will be granted directing subpoenas to be issued for them. The parties shall also file with the clerk a list of the names of all such witnesses, and the clerk shall issue certificates to those only which are included in such lists unless otherwise ordered by the court.

## CHARACTER WITNESSES

XVIII. Not more than five witnesses on a side will be allowed to testify as to the character of any person in a cause, civil or criminal, without leave of the court being first asked and obtained.

## OFFICERS AS WITNESSES

XIX. No county or court officer shall, without leave of the court first obtained, be entitled to receive any pay or compensation for testifying as a witness in any cause or trial before the court wherein the county may be liable to pay the costs.

## INSTRUCTIONS

XX. In a case tried to a jury any instruction asked for by either party shall be presented to the court or judge directly after the close of the evidence, or within such reasonable time thereafter as the court or judge may allow, in duplicate. Counsel are presumed to have their proposed instructions prepared in advance and ready for presentation at the close of the evidence. If counsel have no instruction ready for presentation at the close of the evidence they will be allowed but a reasonable time thereafter in which to prepare and offer them.

## ARGUMENT OF COUNSEL

XXI. If the attorney of either party offers himself as a witness in behalf of his client and gives evidence on the merits of the trial, he shall not argue the case or sum it up to the jury unless by permission of the court.

## TIME OF ARGUMENT

XXII. Except in causes of felony, not more than one hour on each side will be allowed counsel to argue any matter or cause to the court, or jury, unless an extension of time be granted by the court prior to the beginning of the arguments.

## DEPOSITIONS

XXIII. No exceptions to depositions, other than to the competency of testimony, will be regarded unless in writing, specifying the grounds of objections, and filed and noted on record at least one day before the day fixed for the trial of such cause. And it shall be competent for any person filing a deposition to serve a written notice upon the attorney for the opposite party of the filing thereof,

and unless a motion is made and filed within ten days thereafter to suppress such deposition for some informality in the taking or certifying thereof, such objections shall be deemed to have been waived.

## PROBATE MATTERS

XXIV. Whenever any notice in any probate proceeding is required to be given by law or by order of the court or a judge thereof, and no mode is provided by law for giving of such notice, it shall be by personal service thereof, or by posting or publication, as the court or judge, by order, may direct, and for such time as may be fixed in such order, provided that when the notice is given by publication or posting it shall not be less than ten days. Any matter pending in probate may be called up by leave of the court at any time.

## DISMISSAL OF APPEALS

XXV. In all cases when an appeal has been perfected in an inferior court the transcript must be filed in this court by appellant within fifteen days after such appeal has been perfected. If not so filed the respondent may have the case docketed on paying the docket fee, and have such appeal dismissed on motion, by serving notice on the appellant or his attorney, after the expiration of said fifteen days, and such dismissal shall be a bar to another appeal in the same action; or the respondent shall have the right at his option to have the cause docketed in the district court and shall be entitled to judgment in his favor in such court. Such motion must be supported by affidavit showing the negligence of appellant in having the transcript prepared, or failure to pay the clerk of the court the fees necessary to have the cause docketed.

## ENTRY OF JUDGMENT

XXVI. No judgment shall be entered by the clerk upon any note, bill, or other obligation for the payment of money, until the same is presented to him by the person entitled to judgment thereon, and the clerk shall have endorsed thereon over his signature the fact that judgment has been rendered thereon. The endorsement shall also name all the



parties to such obligation against whom judgment has been rendered and the date of its rendition. Thereupon the clerk shall file it with the papers in the cause.

The clerk shall not be obliged to enter judgment in any cause until a written form of it has been prepared by the attorney representing the party or parties entitled to have the same entered; nor until the legal fee chargeable therefor shall have been paid.

All orders in probate and other matters requiring the signature of the judge must be prepared and presented to him by the attorney of the person entitled to the same.

## JURORS

XXVII. In order to avoid the expense of mileage for jurors summoned from outside the limits of the County Seats of Beaverhead, Madison and Jefferson Counties, who are not competent to serve as jurors under Sections 8890 or 8892 of the Revised Codes, or who are exempt from jury service under Section 8893, or who have a sufficient excuse under Section 8894 of the Revised Codes.

IT IS ORDERED that the sheriff in summoning such jurors shall notify each juror so summoned, that if he is disqualified for jury service, or is exempt from jury service, or has any sufficient excuse from jury service under the provisions of the statutes heretofore noted above, such person so summoned shall put his excuse in writing in the manner and form provided by law and under oath and forward same to the judge, and upon his failure so to do, no juror so notified shall receive any mileage or per diem if thereafter excused for any reason existing at the time of the service upon him of the jury summons.

## FINDINGS AND JUDGMENTS

XXVIII. In every case where the court hands down its findings of fact and conclusions of law, or either of them, or signs or orders judgment entered, it shall be the duty of the Clerk, unless it appears from the Journal that the counsel for the respective parties were present in court at the time, to immediately notify such counsel thereof in writing. And wherever counsel for either party resides without the county in which the case was tried, such notifications shall be sent by registered mail.



## COUNSEL FEES

XXIX. 1. In default cases, where reasonable counsel fees are allowed by law and are asked and are not made the subject of proof by evidence and are left to the discretion of the Court, the following provisions shall govern:

(a) In a divorce action \$50.00, or more if the circumstances especially warrant more.

(b) In actions on unsecured promissory notes:

(1) No fee of less than \$50.00;

(2) On any sum for which judgment is rendered, including interest but not including costs, in excess of \$500.00 and up to and including \$1,000.00, 10 per cent;

(3) On any sum in excess of \$1,000.00 and up to and including \$10,000.00, 5 per cent additional on such excess over \$1,000.00;

(4) On any sum in excess of \$10,000.00, 3 per cent additional on such excess over \$10,000.00.

(c) In action for the foreclosure of mortgages or liens, the same as above provided, except that no fee shall be less than \$50.00.

(d) Extra fees may be allowed, in the discretion of the Court, in actions involving unusual work.

2. In litigated actions, the fees will not be no less than above provided and may be more, if left to the Court or if made the subject of evidence and the evidence should show the value thereof to be more.

3. This rule may, in the discretion of the Court, be modified where there is a consolidation, by different plaintiffs, of actions upon liens for labor or material, into one action, or where two or more liens have been assigned and are sued upon by one plaintiff, in one action; or where two or more mortgages, by one plaintiff, in one action, or where two or more mortgages, first and subsequent, or assigned, are sued upon in one action.

4. This rule may, in the discretion of the Court, be modified, where a count upon a promissory note, in a sum that is trivial, is joined in the same action with other counts that do not carry counsel fees.

5. In probate proceedings when the matter of counsel fees shall be submitted to the Court for determination, the attorney fees shall be based upon the total inventoried value of the estate. On estates ranging from five to ten thousand dollars, the counsel fees shall be fixed approximately at the amount of fees allowed by law to executors and administrators. On estates of less than five thousand dollars, the counsel fees shall be slightly increased over the fees allowed executors and administrators. On estates over ten thousand dollars, the counsel fees shall be slightly decreased from the fees allowed executors and administrators. All fees are to be in the discretion of the Court as circumstances may direct. No fee of less than fifty dollars is to be allowed except in special cases of trivial estates.

The foregoing rules have this day been adopted as the Rules of this Court. They shall be published immediately for distribution among members of the bar. In thirty days from the date hereof they shall be deemed in full force.

Dated this 25th day of March, 1938.

HENRY G. RODGERS,  
Judge.

### **NOTICE OF COURT RULE XXX.**

In the District Court of the Fifth Judicial District of the State of Montana, in the matter of Court Rules in and for the Fifth Judicial District.

It is ordered that the Court do and it does hereby adopt a Rule of Court to be designated Rule No. XXX of the Rules of this Court, which said rule shall be and provide as follows:

**RULE XXX.** From and after the date upon which this rule shall become effective, no civil action within which any party thereto shall be otherwise entitled to demand a trial upon any issue of fact before or by a jury shall be set for trial before or by a jury until a conference is had pursuant to the provisions of Section 9327 of the Revised Codes of Montana, 1935, as amended by Chapter 61 of the Session Laws of the Twenty-sixth Legislative Assembly of the State of Montana (1939), and to the end that all such actions may be expeditiously disposed of, it is provided that whenever after issues are joined therein any party to any action falling within the purview of this rule shall desire a disposition of such action, he may file with the Clerk of the Court wherein such action may be pending a notice setting forth the title and number of the action with a request that said cause be set down for pre-trial conference upon all phases of said action which can be considered pursuant to the Pre-trial Practice Act Amendment hereinbefore referred to. At the next session of the Court after the filing of such request, the Clerk of the Court wherein the request is filed shall present the same to the Court and the case shall be immediately set for such pre-trial conference at a date which, in the absence of agreement between the parties with the consent of the Court for an earlier date, shall be not less than two weeks from the date upon which the setting shall be made.

Done in open Court this 19th day of September, A.D. 1945, at Boulder, Montana.

LYMAN H. BENNETT, Judge.

THE COURT OF COMMONS AND THE HOUSE OF LORDS  
IN PARLIAMENT ASSEMBLED  
DO HEREBY DECLARE THAT THE  
ACTS OF PARLIAMENT IN THIS BEHALF  
ARE VALID AND OF FULL FORCE AND EFFECT

IN WITNESS WHEREOF WE HAVE HEREUNTO  
SIGNED OUR HANDS AND THE GREAT SEAL OF GREAT BRITAIN  
THIS SEVENTH DAY OF JULY 1832

OFFICE OF THE CLERK OF THE PARLIAMENTS

THE CLERK OF THE PARLIAMENTS  
DO HEREBY CERTIFY THAT THE  
ACTS OF PARLIAMENT IN THIS BEHALF  
ARE VALID AND OF FULL FORCE AND EFFECT  
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CLARENCE R. BISHOP, CLERK

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